

Committee of Experts

## **Guyana Response to the Recommendations of the First Round Review**

### **STANDARD FORMAT FOR THE PREPARATION OF THE PROGRESS REPORTS (ARTICLES 31 AND 32 OF THE RULES OF PROCEDURE AND OTHER PROVISIONS OF THE COMMITTEE)<sup>1</sup>**

#### **SECTION I. PROGRESS IN THE IMPLEMENTATION OF THE RECOMMENDATIONS**

##### **A. FIRST ROUND OF REVIEW**

Instructions: Following the same structure as the country report of the First Round,<sup>2</sup> and with respect of each one of the recommendations to which your country wishes to refer in this progress report, please provide the following information:

#### **1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE 111, PARAGRAPHS 1 and 2 of the CONVENTION)**

##### **1.1 Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms**

- I. **RECOMMENDATION 1.1**: In the light of the comments made in this section, the Committee recommends that the State under review consider strengthening the implementation of the provisions on conflicts of interest, and ensure that the laws on this matter are applicable to all public officials and employees, so as to permit the practical and effective application of a public ethics system.

#### **Measures Suggested by the Committee: see a, b, c, d, e, f**

The Cooperative Republic of Guyana wishes to inform the Committee that the Procurement Act 2003 and Regulations ( in particular Sections 55 and 60 which refers to conflict of interest and offences), the Fiscal Management and Accountability Act 2003 ( sections 10, 11, 49 and 85 hold the Minister and all public servants accountable even after the person/s cease/s to hold office) , and the Audit Act 2004 ( section 6 refers to no conflict of interest in relation to

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<sup>1</sup> This format was adopted by the Committee at the Plenary Session held on June 29, 2007, within the framework of its Eleventh Meeting.

<sup>2</sup> By way of a guide, the last page of this standard format describes that structure in connection with the issues covered in the First Review Round.

the person who holds the office of the Auditor General) does address these recommendations at 1 a, d, e and f,  
In relation to 1, band c,

Guyana advises that in relation to these recommendations the Public Service Ministry and the Public Service Commission is making efforts to ensure that all appointments are done in compliance with the Public Service Rules and the Public Service Commissions Rules.

However, the Committee should also keep in mind that although Guyana is 85,000 square miles in size the population is only 700,000 and therefore this poses challenges in relation to communal and familial linkages. Public servants are expected in spite of these to act in an ethical and professional manner and to uphold the best standards. They are also aware that there are consequences for abuse of their position.

The Integrity Commission Act and the Code of Conduct contained in the said Act in Schedule 11 refers to all persons in public life whether elected ( at the national, regional, local government levels including the President and all members of the Cabinet and all Members of Parliament ) or appointed public officers including constitutional post holders ( the Chancellor, the Speakers of the National Assembly, the judiciary, permanent secretaries, Regional Executive officers, the heads of agencies, and heads of the Disciplined Services ) has established the legal framework for a public ethics systems.

#### **ADOPTED MEASURES:**

The implementation of the Procurement Act, the Fiscal Management and Accountability Act and the Audit Act coupled with the introduction and establishment of the expanded committee system in Parliament allowing for scrutiny and oversight of every sphere of government through an empowered the Public Accounts Committee and the four sectoral committees ( economics, social services, natural resources and foreign relations) has improved fiduciary oversight.

As of 2006, the Audit Office and the Auditor General now reports directly to Parliament instead of through the Minister of Finance and is under the general supervision of the Public Accounts Committee as prescribed in the constitution.

The Standing Orders of the Parliament of Guyana went under a comprehensive review which led to total revision by a Special Select Committee in 2006 which provides for Ministers and Public servants to be summoned to appear before the sectoral committees.. In addition it proscribes Members of Parliament from having a pecuniary interest on a matter before the Parliament and prohibits receiving monies for services for a person appearing before a Committee.

In addition the meetings of the Public Accounts Committee and the 4 sectoral committees are open to the public and the media.

Interventions to strengthen the Integrity Commission Act and the functioning of the Commission are under review.

**1.2 Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms.**

**RECOMMENDATION 1.2**

Guyana has made strenuous efforts in to tighten up the accounting and auditing systems as well as fiduciary oversight in the last two years. The 3 pieces of legislation referred to in 1.1 have introduced new measures and improved efficiency in allocation and utilization of resources and accountability. These new measures have been implemented with the assistance of the GOG/IDB Fiscal and Financial Management Programme (which will end in 2008) and the GOG/IDB Public Service Modernization and Management Programme (concluded in 2007).

The Ministry of Finance has introduced an electronic system for tracking and releasing funds to different government agencies including 7 of the 10 regional administrations known as IFMAS which has improved scrutiny and better management of resources; it has also proven to be a cost saving mechanism in relation to the disbursement of funds.

**ADOPTED MEASURES:**

The Rules, Policies and Procedures Manual 2006 of the Audit Office of Guyana was developed with external technical support, and then submitted to and scrutinized by the Public Accounts Committee which then submitted it to the National Assembly for its approval. The Manual did receive Parliamentary approval and is in force. The 2006 Manual is comprised of 14 volumes and is posted on the Audit Office's website. An electronic version has been shared with the Technical Secretariat.

There has been an improvement in information sharing with the public and the media to incorporate them into efforts to reduce corruption and improve more efficient use of public resources.

**1.3 Standards of Conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.**

**RECOMMENDATION 1.3**

**Measures suggested by the Committee 1.3 a, b, c, d**

**ADOPTED MEASURES**

Guyana wishes to advise the Committee that these suggested measures are under consideration. The Committee is also asked to note that after its First Review to the Committee, national and regional elections in Guyana were held August 2006. Therefore Parliament was dissolved between May and September 2006; all new parliamentary committees were appointed between December 2006 and January 2007.

**2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE 111, PARAGRAPH 4 OF THE CONVENTION)**

**RECOMMENDATION 2:**

**Measures suggested by the Committee a, b, c, d, e,**

**ADOPTED MEASURES:**

Guyana reiterates that interventions are under consideration for strengthening the Integrity Commission Act and the Commission.

Furthermore, the Guyana Revenue Authority has invested in improving the Income Tax Department and enhanced its investigative capacity. This will be further enhanced through the assistance of the Millennium Challenge Corporation with a grant of \$6M USD which will focus on a range of issues relating to fiduciary oversight including the taxation and customs systems.

The Financial Intelligence Unit has been established and a new Anti-Money Laundering and Counter-Financing of Terrorism Bill 2007 is under examination by a Special Select Committee of the Parliament and is expected to report to the National Assembly before the end of 2008.

**3. OVERSIGHT BODIES FO THE SELECTED PROVISIONS (ARTICLE 111, PARAGRAPHS 1, 2, 4, AND 11 OF THE CONVENTION)**

**RECOMMENDATION 3**

**ADOPTED MEASURES:**

Guyana is in favour of strengthening those oversight bodies in existence rather than creating more and newer ones, primarily because of budgetary and human constraints.

Oversight bodies such as the Judiciary, Prosecutor's Office, the Police Complaints Authority, the Public, Police and Judicial Service Commissions, the Integrity Commission, the parliamentary oversight committees mentioned earlier on in this report, all will need to be strengthened; so too the Financial Intelligence Unit(FIU), the Police Force (anti- fraud unit) and the Guyana Revenue Authority, which will need special training to improve their skills in detecting, tracking/uncovering and prosecuting crimes of corruption. The GOG /IDB funded projects for the Justice Sector Reform Programme and the Citizen Security Programme with the MCA programme will help to improve the capacity of most of the above-mentioned entities.

The appointment of the Ombudsman- which is outstanding and is dependent on the agreement of the President and the Leader of the Opposition,- will provide a forum by the public to make complaints and expose acts of corruption.

Guyana is of the view that these entities, constitutional and parliamentary bodies fundamentally comprise a solid and sustainable framework for an efficient, professional and ethical public system.

**4. MECHANISMS TO PROMOTE THE PARTCIPATION BY CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION ( ARTICLE 111, PARAGRAPH11 OF THE CONVENTION)**

#### **4.1 GENERAL PARTICIPATION MECHANISMS** **RECOMMENDATION 4.1**

##### **ADOPTED MEASURES**

Guyana over the last 16 years has created a very open system vis a vis access to Cabinet members, Ministers and other senior officials. As a country which is the size of United Kingdom ( minus Scotland) with less than one-third of the population living in two-thirds of the land which is in the interior, it is incumbent on government to be present and accessible to these far flung areas which have their own community organizations.

In addition to political parties, there are for instance over 300 community development committees, hundreds of community women and youth organizations, 300 community policing groups, fishermen and farmers groups, the business sector, the labour movement, the religious community ( Christian, Muslim and Hindu and other religions), and the National Toshaos Council and Amerindian organizations who are engaged on a regular basis and who from time bring matters relating to corruption to the authorities' attention.

Guyana has joined the Crime Stoppers International 2006 and a Guyana Chapter was established in early 2008 and is now functioning.

As a norm non-governmental organizations are consulted on draft legislation and in some cases they initiate changes to the law.

The media also plays a critical role in investigating and in preventing corruption as well as informing and educating the public on rules, laws and regulations so that they are well informed and understand the role they can play in preventing and reducing corruption..

#### **4.2 MECHANISMS FOR ACCESS TO INFORMATION**

##### **RECOMMENDATION 4.2**

##### **Measures suggested by the committee –a, b,**

##### **ADOPTED MEASURES**

Guyana has taken this matter under consideration.

However, it should be noted that budget and statutory agencies are expected to table their annual reports on an annual basis to the Parliament where they become public documents. The Audit General's Annual report is tabled in the Parliament and available to the public, the Public Accounts Committee then scrutinizes his findings for all government agencies.

All loan agreements are tabled in Parliament.

Most Ministries and state agencies have established websites, of particular interest would be those of the Parliament, the Audit Office and the National Procurement and Tender

Administration Board. However, these are relatively new and experience some challenges in posting information on a daily basis.

The Budget of the country is publicly discussed/debated in the National Assembly and at the community level.

The proceedings of Parliament are televised so that the majority of the public are familiar with matters being brought by the government and or the Opposition.

#### **4.3 MECHANISMS FOR CONSULTATION**

##### **RECOMMENDATIONS 4.3.1 , and 4.3.2.**

##### **ADOPTED MEASURES**

The Constitution of Guyana enshrines the involvement of civil society in Article 13. The Constitution furthermore establishes the mechanisms in the appointment of the Public, Police and Judicial Service Commissions and the four new human rights commissions for the participation of civil society in submitting nominations for appointment by the President through a parliamentary process.

#### **4.4. MECHANISMS TO ENCOURAGE PARTICIPATION IN PUBLIC ADMINISTRATION**

##### **RECOMMENDATION 4.4.**

#### **4.5 MECHANISMS TO ENCOURAGE PARTICIPATION IN THE FOLLOW UP OF PUBLIC ADMINISTRATION**

##### **RECOMMENDATION 4.5**

With respect to the recommendations Guyana affirms that there are extensive and constant participation of citizens in policy-making and performance measurements. Some of the mechanisms have been formally established and extensively elaborated in response to previous recommendations in this report.

In the period beyond the period under review these have been further expanded by H.E. President Bharat Jagdeo in the creation of National Stakeholder Forums made up of the parliamentary political parties, the religious communities ( Christian, Hindu and Muslim) , the business community, labour movement, women and Amerindian organizations to discuss crime and their involvement in crime fighting, global fuel and food prices and interventions to reduce the impact on the most vulnerable.

#### **5. ASSISTANCE AND COOPERATION**

##### **RECOMMENDATION 5.1**

Guyana's constitution allows the courts to refer to the international conventions, treaties that Guyana has signed for interpretation where the constitution or laws of Guyana are silent or ambiguous.

Please see attached Appendix reference treaties recently ratified reference Corruption and Mutual Assistance in Criminal Matters.

### **RECOMMENDATION 5.2**

Guyana wishes to advise that the Mutual Assistance in Criminal Matters Bill has to be returned to the 9<sup>th</sup> Parliament as it lapsed

### **RECOMMENDATION 5.3**

Guyana wishes to bring to the Committee's attention that recent Regional meetings on Crime and Violence with CARICOM countries and neighbouring countries have created a much greater willingness and commitment by all countries to work jointly in a more cohesive and collaborative manner. This will lead to model legislation to address some of the inadequacies in the present laws as well as share resources.

## **6. CENTRAL AUTHORITIES**

### **RECOMMENDATIONS 6.1, 6.2, and 6.3**

Guyana has complied with these recommendations.

## **7. GENERAL RECOMMENDATIONS**

### **RECOMMENDATION 7.1**

Guyana wishes to advise that this ongoing.

### **RECOMMENDATION 7.2**

Guyana will seek to do so, and when required, will seek the assistance and advice of the Technical Secretariat.

### **RECOMMENDATIONS 7.3 and 7.4**

Guyana has acknowledged and responded to the above-mentioned recommendations at no.7 in this report and advises that these are on-going matters to be addressed at all times in improving transparency, accountability and effective use of limited resources.

## **B. SECOND ROUND OF REVIEW----- NOT APPLICABLE TO GUYANA AT THIS TIME**

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NOTE: *Points I and II referred to in Chapters A (First Round) and B (Second Round) of Section I, in relation to each of the recommendations with respect to which your State wishes to refer to progress on implementation, would be repeated.*

**SECTION II: DIFFICULTIES IN THE IMPLEMENTATION OF THE RECOMMENDATIONS (ONLY RESPOND TO THIS SECTION IF YOUR COUNTRY CONSIDERS IT NECESSARY)**

**A. FIRST ROUND OF REVIEW:**

**Guyana wishes to bring to the Committee’s attention that there are overarching difficulties in relation to adequate resources ( primarily of a technical nature ) coupled with competing demands primary amongst these is poverty reduction for limited resources in a politically sensitive environment.**

**Furthermore, it should be recognized that the time period to bring into effect new legislation relating to the Convention may be too short ( that is between reviewing periods) as the parliamentary process in itself seeks consensus and therefore evolves at its own pace of gestation.**

Instructions: Following the same structure as the country report of the First Round,<sup>3</sup> and with respect of each one of the recommendations with respect to which your country wishes to refer to the difficulties that have been faced with respect to implementation, please provide the following information:

- I. RECOMMENDATION: Please transcribe the text of the recommendation made to your State by the Committee in the country report of the First Round, and with respect to which you would like to refer to the difficulties that you have faced with respect to implementation:

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- II. MEASURES: Please determine the measure(s) suggested by the Committee to comply with the foregoing recommendation, or the alternative measure(s) selected for this purpose, and with respect to which you wish to inform of the difficulties that have been encountered with respect to its implementation, and also briefly inform of those difficulties. If you consider it relevant, please indicate the “Internet” webpage where more detailed information in this regard can be obtained, specifically indicating what information on that page you wish to refer to:

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<sup>3</sup> By way of a guide, the last page of this standard format describes that structure in connection with the issues covered in the First Review Round.

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**B. SECOND ROUND OF REVIEW:**

Instructions: Following the thematic structure of the country reports from the Second Round of Review, and with respect to each of the recommendations to which your country wishes to report on the difficulties that have been encountered in relation to implementation, please provide the following information:

I. RECOMMENDATION: Please transcribe the text of the recommendation formulated to your State by the Committee in the country report from the Second Round, and with respect to which you would like to inform on the difficulties encountered in relation to its implementation:

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II. MEASURES: Please determine the measure(s) suggested by the Committee to comply with the foregoing recommendation, or the alternative measure(s) selected for this purpose, and with respect to which you wish to inform of the difficulties that have been encountered with respect to its implementation, and also briefly inform of those difficulties. If you consider it relevant, please indicate the "Internet" webpage where more detailed information in this regard can be obtained, specifically indicating what information on that page you wish to refer to:

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*NOTE: Points I and II referred to in Chapters A (First Round) and B (Second Round) of Section I, in relation to each of the recommendations with respect to which your State wishes to refer to progress on implementation, would be repeated.*

**SECTION III: OTHER PROGRESS IN THE IMPLEMENTATION OF THE CONVENTION (ONLY RESPOND TO THIS SECTION IF YOUR COUNTRY CONSIDERS IT NECESSARY)**

Instructions: Following the thematic structure of the Inter-American Convention against Corruption, and in relation to each one of the Convention provisions to which your country wishes to refer to progress in implementation, please provide the following information:

I. PROVISION OF THE CONVENTION: Please indicate the number of the Article of the Convention and of the paragraph of that Article, if appropriate, with respect to which you would like to refer to progress in implementation:

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II. MEASURES: Please briefly describe the concrete measures or actions that have been executed in relation to the implementation of the provision of the Convention noted above. If you consider it relevant, please indicate the "Internet" webpage where more detailed information in this regard can be obtained, specifically indicating what information on that page you wish to refer to:

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NOTE: *Points I and II referred to in Section III, with respect to each of the provisions of the Convention, in relation to each of the recommendations with respect to which your State wishes to refer to progress on implementation, would be repeated.*

THEMATIC STRUCTURE OF THE COUNTRY REPORTS OF THE FIRST ROUND

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)
  - 1.1 Conflicts of interest
  - 1.2 Standards of conduct and mechanisms to ensure the proper conservation and use of resources entrusted to government officials
  - 1.3 Measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware
2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4, OF THE CONVENTION)
3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4, AND 11, OF THE CONVENTION)
4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)
  - 4.1 General participation mechanisms
  - 4.2 Mechanisms for access to information
  - 4.3 Mechanisms for consultation
  - 4.4 Mechanisms to encourage participation in public administration
  - 4.5 Mechanisms for participation in the follow-up of public administration
5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)
6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)
7. GENERAL RECOMMENDATIONS

THEMATIC STRUCTURE OF THE COUNTRY REPORTS OF THE SECOND ROUND

1. SYSTEMS FOR GOVERNMENT HIRING AND STATE PROCUREMENT OF GOODS AND SERVICES (ARTICLE III, PARAGRAPH 5 OF THE CONVENTION)

Hiring systems for public officials

Systems for the procurement of goods and services by the state

2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO, IN GOOD FAITH, REPORT ACTS OF CORRUPTION (ARTICLE III, PARAGRAPH 8 OF THE CONVENTION)

3. ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)

Criminalization of the acts of corruption set out in Article VI.1 of the Convention

Application of the Convention to other acts of corruption not described therein, pursuant to the terms of Article VI.2

4. GENERAL RECOMMENDATIONS

## Appendix A

### **Appointment/Removal and Disciplinary Control of Judges**

- The Judicial Service Commission is vested with the power to make appointments, remove and to exercise disciplinary control over the Commissioner of Title; DPP; Deputy DPP; Registrars and Deputy Registrars of the High Court, Deeds and to such other offices connected with the courts of Guyana or for appointment to which legal qualifications are required, Article 199 (1) and (3)
- The Members of the Commission are appointed by the President after meaningful consultation with the Leader of the Opposition: Article 198(2)(a); the constitution stipulates a two-tiered process for the President's action, firstly through a defined parliamentary process by which up to two nominations are given to the President to appoint and secondly, one appointment by the President in his own deliberate judgement and one appointed after meaningful consultation with the Leader of the Opposition; the Chancellor and the Chief Justice are specifically identified in the constitution as members .
- Article 197 (4) and (5) – Removal of a Judge from office. The President, if advised by the Prime Minister or JSC, can appoint a Tribunal to enquire into the matter and advise the President as to the removal of the Judge from office.
- Article 197 also makes a new provision for the removal of a judge for consistently not writing decisions within a specified time and gives to Parliament the authority to set those parameters. A draft bill is presently under consideration in relation to this issue of consistent non-submission of written decisions by judges for extended periods of time to the disadvantage of the litigants and to the administration of justice.
- Appointment of Chancellor and Chief Justice is done by the President after obtaining the agreement of the Leader of the Opposition – Article 127 (1)
- If the office of Chancellor or that of the Chief Justice becomes vacant the President after meaningful consultation with the Leader of Opposition appoints a judge to perform the functions of the office of Chief Justice or Chancellor: Article 127(2)
- Judges other than the Chancellor and the Chief Justice and part-time judges are appointed by the President who acts in accordance with the advice of the Judicial Service Commission: Article 128 and 128A
- Article 197(2): Age of retirement. Puisne Judges vacate that office at the age of 62 years, any other judge other than the Chancellor at the age of 65 years, and, the Chancellor 68 years.
- Article 197(3): deals with removal of judges from that office.
- Section 5 of the High Court Act Cap 3:02 states that for the appointment of a person to hold or act in the office of a puisne judge that person must be an advocate for seven years.

- There is no provision in the legislation that allows for the appointment of magistrates or the years of services. The Summary Jurisdiction (Magistrates) Act Cap 3:05 states that there should be such number of magistrates as may be required for the discharge of the businesses of the courts: Section 7.
- The Chancellor assigns a Magistrate to preside over a particular court or courts, the place, days and hours of the sitting of courts
- The practice is for the JSC to appoint magistrates. Interested persons, having been an advocate for 3 years upwards (previously 5 years and upwards but due to shortage of magistrates it was to revised to 3 years and upwards) apply to the JSC to hold the office of a Magistrate. The decision to appoint/remove and discipline rests solely with the JSC.
- Prior to the 1980 constitution, Magistrates were appointed under the Public Service Commission. With the formation of the JSC appointment of magistrates fell under their purview. However, the retirement age of magistrates remained as that of public servants, 55 years.
- Article 199 (3) vests powers in the JSC to appoint persons *inter alia*, to such other offices connected with the courts or appointment to which legal qualifications are required.

## **Appendix B**

### **United Nations Convention Against Corruption**

- Entry into force-- 14<sup>th</sup> December 2005
- Guyana acceded on 16<sup>th</sup> April 2008

### **Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Materials.**

- Entry into force – 7<sup>th</sup> January 1998
- Guyana became a signatory on the 14<sup>th</sup> November 1997. The National Assembly on March 27<sup>th</sup>, 2008 gave its approval for Guyana to proceed to ratify this Convention. Guyana will now proceed to ratify this Convention shortly.

### **Inter-American Convention on Mutual Assistance in Criminal Matters**

- Entry into Force – 14<sup>th</sup> April 1996
- Guyana became a signatory on 28<sup>th</sup> February 2006. The National Assembly on March 27<sup>th</sup>, 2008 gave its approval for Guyana to ratify this Convention. Guyana will now proceed to ratify this Convention shortly.

### **Caribbean Treaty on Mutual Legal Assistance in Serious Criminal Matters, 2000**

- Guyana became a signatory on the 5<sup>th</sup> Jan 2006
- Article 25 of the Treaty provides for States that are signatories to ratify the Treaty in accordance with their respective constitutional procedures.